

APPEAL NO. 021407
FILED JULY 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A combined contested case hearing was held on May 10, 2002, to consider the disputed issues in (docket 1), involving a claimed work-related injury on (date 1), and (docket 2), involving a claimed work-related injury on (date 2). As to docket 1, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury on (date 1), and did not have disability from such claimed injury. As to docket 2, the hearing officer determined that the claimant failed to meet her burden of proving that she sustained a compensable injury on (date 2), and that the respondent (carrier) is relieved of liability for this claimed injury because the claimant, without good cause, failed to give her employer timely notice of the claimed injury. The claimant has appealed these adverse determinations on evidentiary sufficiency grounds. The carrier's response urges the sufficiency of the evidence to support the challenged determinations.

DECISION

Affirmed.

The claimant testified that in September 2001, she commenced employment as a packer at a meatpacking plant; that on (date 1), she was directed to dispose of a box of meat patty papers in the dumpster; and that when she threw the box, which she estimated as weighing about two pounds, into the side door of the dumpster, she felt a sharp pain in her stomach and sometime later felt a lump, which she described as a hernia. The claimant said she reported this injury on the day of its occurrence to a specific supervisor. The carrier called witnesses from the plant who testified that the plant had no supervisor with the name the claimant supplied. The claimant further testified that on (date 2), she injured her right shoulder while opening cardboard boxes using her right elbow to jam the folded portions down, that she told one of the supervisors about this injury soon after it occurred, and that her doctor has had her off work since (date 2).

The claimant had the burden to prove that she sustained the claimed injuries, that she timely reported the earlier injury, and that she had disability as that term is defined in Section 401.011(16). Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The Appeals Panel has stated that in workers' compensation cases, the disputed issues of injury and disability can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. This notion holds true as well for the timely reporting of an injury. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.).

The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). In this case, the hearing officer found the claimant's evidence neither credible nor persuasive. As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Gary L. Kilgore
Appeals Judge